

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DIQUAN BOOKER,

Plaintiff,

v.

9:22-CV-0600
(GTS/ATB)

SGT. FLINT; and OFFICER MURPHY,

Defendants.

APPEARANCES:

OF COUNSEL:

DIQUAN BOOKER, 16-A-1691

Plaintiff, *Pro Se*

Greene Correctional Facility

P.O. Box 975

Coxsackie, New York 12051

HON. LETITIA JAMES

Attorney General of the State of New York

Counsel for Defendants

The Capitol

Albany, New York 12224

RACHAEL OUIMET, ESQ.

Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Diquan Booker (“Plaintiff”) against the two above-captioned corrections officers at Washington Correctional Facility (“Defendants”), are (1) Defendants’ motion for summary judgment based on a failure to exhaust available administrative remedies, and (2) United States Magistrate Judge Andrew T. Baxter’s Report-Recommendation recommending that Defendants’ motion be denied. (Dkt. Nos. 24, 52.) The parties have not filed an objection to the Report-Recommendation, and

the time in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Baxter's thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation:¹ Magistrate Judge Baxter employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein, and Defendants' motion for summary judgment is denied.

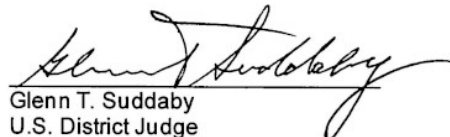
ACCORDINGLY, it is

ORDERED that Magistrate Judge Baxter's Report-Recommendation (Dkt. No. 52) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 24) is **DENIED;** and it is further

ORDERED that this case is referred back to Magistrate Judge Baxter for review of Plaintiff's motion for summary judgment (Dkt. No. 49).

Dated: June 1, 2023
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).